IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.691 OF 2003

Smt.Sindhu Dada Kumbhar ... Petitioner

versus

Dada Vitthal Kumbhar & anr. ... Respondent

...

Mrs.Smita Mane, for the Petitioner.

Mr.H.D. Gole, for the Respondent No.1.

Mr.K.V. Saste, A.P.P., for the Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

15th March 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Gole waives notice for the Respondent No.1 and Mr. Saste, A.P.P., waives notice for the Respondent No.2. As short point is involved, petition is taken up for final disposal forthwith by consent.

2. This petition takes exception to the judgment and order of the 6th Additional Sessions Judge, Satara, dated March 27, 2003 in Criminal Revision Application No. 37 of 2002. The Petitioner had taken out proceedings under section 125 of the Code of Criminal Procedure before the Judicial Magistrate, First Class at Khandala, being Maintenance Application No. 71 of 2000. In support of the Petitioner's claim that she was married to the Respondent, besides her evidence, she relied on the evidence of P.W.No. 2, who is her brother, P.W.No.3, who claims to have remained present on the occasion of marriage between the Petitioner and the Respodnent and had given bullock cart for travel from one place to another and P.W.No.4, who is related to both the parties and was Corporator in Pune. Before the lower Court, the Respondent contested the fact that the Petitioner is lawfully wedded wife of the Respondent. The lower Court, on analysing the evidence on record, accepted the version of the Petitioner and held that there was evidence to support the claim of the Petitioner that she was legally wedded wife

of the Respondent. On that finding, the Court proceeded to direct the Respondent to pay maintenance at the rate of Rs.350/- per month from the date of filing of the application.

3. Being dissatisfied, the Respondent carried the matter in revision before the Sessions Court. The revisional Court, on the other hand, on examining the same evidence on record, took the view that it was very difficult to hold that the Petitioner was knowing the meaning of marriage at the age of 7 and 9. On that finding, the revisional Court proceeded to hold that the evidence adduced on the point of marriage cannot be accepted and, therefore, allowed the revision application by setting aside the order passed by the Magistrate. This decision is subject matter of challenge in the present petition.

4. The grievance before this Court essentially is that the revisional Court exceeded its jurisdiction by reapprecaiting the evidence on record. It is further submitted that the revisional Court has assumed on the basis of

conjectures and surmises that the brother of the Petitioner must have been 7 years old and Petitioner 9 years old at the time of marriage, which happened in the year 1977. It is submitted that if at all the revisional Court was of the view that the Petitioner was not competent to enter into marriage with the Respondent at the relevant time, being minor, the revisional Court ought to have relegated the parties before the lower Court for adducing evidence on the factum of age of the Petitioner at the relevant time.

5. Having considered the rival submissions, there is substance in the grievance made on behalf of the Petitioner. Indeed, the revisional Court has proceeded on the age of the Petitioner as stated in the application filed before the lower Court in the year 2000 as 32 years. Thereby deducting that period, the age of the Petitioner would come to around 9 years at the time of marriage. Even so, if at all the revisional Court wanted to proceed on the basis that the Petitioner was not competent to contract marriage in the year 1977 being minor, it was necessary to invite the parties to adduce

evidence to prove their respective age at the time of marriage.

6. Accordingly, this petition succeeds by setting aside the impugned order as well as the final order passed by the lower Court on the maintenance application instituted by the Petitioner and relegating the parties before the lower Court for adducing evidence on the factum of age of the Petitioner and the Respondent at the relevant time in the year 1977. If the evidence adduced by the parties was to establish that the Petitioner was minor at the relevant time, then obviously, the conclusion would follow that the so-called marriage between the Petitioner and the Respondent was not lawful marriage. There is no evidence on record to the effect that, after the Petitioner had completed 18 years of age, she continued to stay with the Respondent and they consummated the marriage, or, gave an impression to the world at large that they were staying together or had relation as husband and wife. Accordingly, the limited issue that will have to be considered by the lower

Court is about the age of the respective parties on the date of so-called marriage in the year 1977. The lower Court will dispose of the matter as expeditiously as possible preferably within one month from the receipt of writ of this Court.

.7 Petition disposed of on the above terms.

(A.M.KHANWILKAR,J.)